

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 11-11

November 23, 2010

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Reporting on 10(j) Initiative Regarding Discharges
During an Organizing Campaign

On September 30, 2010, GC Memorandum 10-07, "Effective Section 10(j) Remedies for Unlawful Discharges in Organizing Campaigns," was issued. In order that the Acting General Counsel may evaluate the performance under this initiative, it is important to gather statistics on the timely processing of such cases and the outcomes achieved by this new initiative. Unfortunately, much of this information is not available in CATS. Therefore, we have concluded that it is necessary to have each Region fill out information on a monthly basis that will track certain key milestones in the handling of cases involving discharges during an organizing campaign. When NxGen is deployed to all Regions, this report will become one of the reports available in NxGen. However, in the interim, we have developed an Excel report that will capture certain critical information. The new Excel reports will be maintained in an E-room where they will be filled out by each Region on a monthly basis and will automatically be rolled up into a National Report. A sample report is attached. Beginning November 30, 2010, Operations will place this new Excel report for each Region in the **Field Offices** E-room and ask that all Regions complete the first spreadsheet by December 7, 2010 and thereafter on a monthly basis, update their spreadsheet. The first spreadsheet will include cases pending for both October and November 2010.

At the end of each month, Operations will run a CATS query to pull all cases that have "discharge organizing campaign" in Cashhandling Notes in CATS. Operations will then populate each Region's Excel spreadsheet with the case names and numbers of the pending cases. The spreadsheets will be kept in the **Field Offices** E-room and each Region will have its own spreadsheet in a folder called "10(j) Discharges in Organizing Campaign". Each Region will complete the spreadsheet not later than the 5th working day after the beginning of the month—the same date that reports are due in CATS. We suggest that 10(j) coordinators be responsible for completing this report, but each Director may determine what systems to establish for completing the report.

In filling out the spreadsheet, the first column of the report is the date of the filing of the charge alleging a discharge during an organizing campaign. Our

experience has shown that during an organizing campaign, there may often be a series of charges that are filed. Regions should enter the date of the filing of a charge in which a discharge was first alleged. This will be the date that we will use for determining the time from filing of the charge to date of disposition of the charge alleging an unlawful discharge. Generally, Regions should complete information only for the lead case in a related group of cases. However, if a later filed charge adds additional discharge allegations, then information on this charge should be separately entered on the spreadsheet.

The first column after the date of filing of the charge alleging a discharge is the date of the disposition of the charge, i.e., the issuance of a complaint, dismissal letter, settlement agreement or withdrawal of the charge. The spreadsheet will then automatically calculate the number of days from filing of the charge to disposition. If the date exceeds the goal, the number of days will be displayed in red.

The next two columns capture the number of discharged employees alleged in the charge and the number of such employees found by the Region to have been discharged in violation of Section 8(a)(3). If all of the alleged discharges have no merit, no further data entry for this case is required other than the date of the disposition of the charge. On the other hand, if some or all of the alleged discharges have merit and the case is not settled, the Region will enter the date that a complaint was issued, the date that the ALJ hearing was first scheduled to open, and the date of the submission to ILB either seeking 10(j) authorization or recommending against such authorization. If 10(j) relief is authorized but the case is not settled, the Region will enter the date the 10(j) petition was filed and the date of the district court hearing on 10(j).

The remaining columns are intended to track our remedial success with the 10(j) initiative. For all cases in which the Region determined that the discharge allegation had merit, the Region would enter a date that the charge was settled or adjusted. If a settlement or adjustment is obtained, the Region would also enter the number of employees that were reinstated and/or the number of employees waiving reinstatement. This number in these two columns should generally be the same as the number of discharges found to have merit. The Region will also enter the amount of backpay and interest collected for the discriminatees, if any, and the percentage that this amount represents of the total backpay and interest owed as of the date of the settlement or resolution.

The report will be cumulative for the fiscal year. Each month, Operations will add new cases to the report that have been filed in each Region during that month based on a query in CATS. Therefore, it is very important to remember to enter "discharge organizing campaign" in Casehandling Notes in CATS as soon as such cases are identified shortly after the charge is filed.

Regions may wish to track their performance in meeting the following interim goals: the date the lead affidavit is taken, the date that all of the charging party's evidence is received, and the date that the Region sends its EAJA letter and requests a position statement from the charged party on the need for 10(j) relief. If so, Operations can add these optional columns to your spreadsheet. If these columns are added, the report will automatically calculate the number of days from the filing of the charge until the date of these interim goals. If the date is beyond the goal, it will be displayed in red. If the date is within the time goals, the number of days will be displayed in black. If a Region wishes to have this feature added to its spreadsheet, please send an E-mail to DAGC Beth Tursell and it will be added to your Region's report.

We recognize that creating another report is not ideal. However, evaluating our success in achieving reinstatement and backpay for employees during an organizing campaign will be critically important to showing the Agency's effectiveness and whether the new program has succeeded in reducing the time needed to obtain interim reinstatement during an organizing campaign. We expect that the need to complete this report on a monthly basis will end shortly after NxGen is deployed to all Regions.

If you have any questions regarding this memorandum, please contact your Assistant General Counsel or Deputy or the undersigned.

/s/
R.A.S.

Attachment
cc: NLRBU

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